

आयकर अपीलीय अधिकरण “सी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री संजय अरोड़ा, लेखा सदस्य के समक्ष ।
BEFORE SHRI MAHAVIR SINGH, JM AND SHRI SANJAY ARORA, AM

आयकर अपील सं./I.T.A. No. 6203/Mum/2014

(निर्धारण वर्ष / Assessment Year: 2005-06)

Asst. CIT (OSD)-I, Central Range-7, Room No. 413, 4 th Floor, Aayakar Bhavan, M. K. Marg, Mumbai-400 020	बनाम/ Vs.	Prime Focus Ltd. 2, Anand Kunj, North Avenue, Santacruz (W), Mumbai-400 054
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAACP 6811 B		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

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प्रत्याक्षेप सं./C.O. No. 44/Mum/2016

(Arising out of ITA No. 6203/Mum/2014)

(निर्धारण वर्ष / Assessment Year: 2005-06)

Prime Focus Ltd. 2, Anand Kunj, North Avenue, Santacruz (W), Mumbai-400 054	बनाम/ Vs.	Asst. CIT (OSD)-I, Central Range-7, Room No. 413, 4 th Floor, Aayakar Bhavan, M. K. Marg, Mumbai-400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAACP 6811 B		
(प्रत्याक्षेपक/Cross Objector)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Premanand J.
प्रत्यर्थी की ओर से/Respondent by	:	Shri Rushabh H. Vyas

सुनवाई की तारीख / Date of Hearing	:	18.7.2016
Date of Order	:	20.7.2016

आदेश / ORDER

Per Sanjay Arora, A. M.:

This is an Appeal by the Revenue and Cross Objection (CO) by the Assessee, arising out of the order by the Commissioner of Income Tax (Appeals)-40, Mumbai ('CIT(A)' for short) in Appeal No. CIT(A)-40/IT/DCIT(OSD-I)C.R.7/43/2013-14 dated 01.7.2014. The assessment was framed by DCIT(OSD)-I, CR-7, Mumbai for the assessment year (A.Y.) 2005-06 vide his order dated 07.3.2013, u/s. 143(3) r/w s. 147 of the Income Tax Act, 1961 ('the Act' hereinafter).

2. At the outset, the Id. Counsel for the assessee stated that it has raised the jurisdictional issue in the assessee's cross-objection and, hence, the CO should be taken up first.

3. The only issue in the CO of the assessee is as regards the upholding by the Id. CIT(A) of the reopening of assessment beyond the period of four years under section 148 r/w s. 147 of the Act despite the fact that all the primary conditions in terms of *proviso* to section 147 of the Act are satisfied. For this, the assessee has raised following grounds:

'The CIT(A) erred in upholding reopening of assessment u/s. 148 r.w.s 147 of the Income Tax Act, 1961 'Act' beyond the period of four years although primary jurisdictional condition for issue of such a notice has not been satisfied.

The CIT(A) erred in failing to appreciate that the appellant had disclosed full and true particulars relating to its claim of depreciation on computer based assets at the time of original assessment.'

4. Briefly stated, the facts of the case are that the assessee is a registered company engaged in the business of providing digital post production facilities to the visual media in terms of Editing, Digitalization, Visual Effects (VFX), Computer Graphics, Animation, etc. The assessee filed its return of income for the relevant assessment year on 27.11.2005. Assessment was completed u/s. 143(3) of the Act on 20.12.2007

(PB pgs. 84-97). The assessee carried the assessment in appeal. Subsequently, the A.O. issued notice u/s. 154 of the Act in the matter of alleged excess depreciation claimed by the assessee on computer based editing equipments. The A.O. issued notice u/s. 154 of the Act in September, 2008, in response to which the assessee submitted relevant details along with the documents on 18.9.2008. The assessee further submitted explanation and brochures pertaining to the computer based assets on 12.12.2008. Subsequently, a remand notice from A.O. was also sent u/s. 154 of the Act on 04.8.2010. However, no order u/s. 154 was passed. Subsequently, a notice u/s. 148 of the Act was issued on 03.5.2011. The reopening was made on the basis of the reason that the assessee has claimed excess depreciation on editing equipments and for this the A.O. recorded the following reasons:

'Reasons for the belief that income has escaped assessment in the case of M/s. Prime Focus Ltd. (PAN: AAACP6811B) for A.Y. 2005-06 within the meaning of Section 147 of the Income Tax Act. 1961.

The assessee has filed its return of income for Assessment Year 2005-06 on 25/11/2005 declaring total income of Rs.6,66,64,980/- . The assessment was completed u/s.143(3) of the Income Tax Ad, 1961 on 28.12.2007 determining total income at Rs.7,62,30,130/- . On verification of the depreciation statement filed along with the return of income, it is seen that the assessee has claimed deprecation of Rs.10,28,46,602/- - which includes depreciation on Editing Equipments (Computer based) @ 60% amounting to Rs.8,113,42,663/- - as detailed below : -

Particulars	Opening WDV	Rate	Depreciation (Rs.)
<i>Editing Equipments (computer based)</i>	<i>1,72,52,895/-</i>	<i>60%</i>	<i>1,03,51,737/-</i>
<i>Addition (upto September)</i>	<i>12,17,50,224/-</i>	<i>60%</i>	<i>7,30,50,134/-</i>
<i>Addition (After September)</i>	<i>98,02,638/-</i>	<i>30%</i>	<i>29,40,791/-</i>
<i>Total</i>	<i>14,88,05,757/-</i>		<i>8,63,42,663/-</i>

The device named as 'Editing Equipments' based on computer were purchased from abroad / India is not a computer as a whole, but it is one part fitted in it, so as to enable to fast the process of film editing. The machine is a device using mechanical power and having several parts for performing a particular task. The Editing Equipments is a machine only and covered under 25% of block of asset and therefore the assessee is entitled for depreciation @ 25% only. The assessee has claimed excess depreciation of Rs.5,03,66,552/- - and the same was allowed and the details of which as under:

<i>W.D.V Rs.1,72,52,895 depreciation @ 25%</i>	<i>Rs.49,13,224/-</i>
<i>Additions more than 180 days of Rs.12,17,50,224/-</i>	

Depredation @ 25%	Rs.3,04,37,556/-
Additions less than 180 days of Rs.98,02,638/-	
Depredation @ 12.5%	Rs.12,25,330/-
	Rs.3,59,76,110/-
Less: Depreciation allowed by the Department	Rs.8,63,42,663/-
Excess depreciation allowed	Rs.5,03,66,553/-

The assessee company has claimed excess depreciation; on Editing equipments though the same is not allowable. In this case provisions of section 147 of the Income tax Act, 1961 are clearly applicable as there is failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment.'

The A.O. framed the reassessment u/s. 143 r/w s. 147 of the Act by allowing depreciation on 'computer based' editing equipments at 25%, as against @ 60% claimed by the assessee treating the same as computer. Aggrieved, the assessee preferred an appeal before the CIT(A), whereby the assessee challenged the reopening also. The CIT(A) however confirmed the action of the A.O. vide para 18 of his appellate order, as under:

'18. In the second ground, the assessee has contended that the AO erred in reopening the assessment by issuing of notice u/s.148 of the Act. It has to be noted here that rightly or wrongly, the AO was under the bona fide impression that the assessee is not entitled to claim depreciation at the rate of 60% in respect of editing equipments. He was of the belief that those equipments may be computer-based, but they themselves were not computers. In such a situation, the AO thought it necessary to invoke the provisions of Sec.147 of the Act and to issue a notice u/s.148 of the Act. Such an impression of the AO cannot be said to be totally unjustified, especially when there is no evidence to the fact that the assessee had furnished all the necessary details, including bills and vouchers for purchase of these equipments or their specifications or the technical experts reports, during the course of the original assessment proceedings. In such a situation, forming a view by the AO that such assets may not qualify to be computers, cannot be entirely faulted. Accordingly, I uphold the action of the A.O. in issuing the notice u/s. 148 of the Act, and this ground of appeal is therefore, rejected.'

Aggrieved, the assessee has raised this issue in cause of action.

5. Before us, the Id. Counsel for the assessee explained that the notice u/s. 148 was issued on 03.5.2011, and the reopening is thus beyond four years from the end of the relevant assessment year. According to him, the assessee's case falls under the first *proviso* to section 147 of the Act. The assessee, he continued, filed complete details in respect of the claim for depreciation, i.e., list of editing equipments, being

‘computer based’, ‘recorder based’ and ‘others’, in the original assessment proceedings, in response to the queries raised, taking us through the relevant part of the questionnaire dated 05.9.2006, forming part of notice u/s. 142(1), which we may reproduce for ready reference:

‘41. Produce the list of editing equipment – “computer based” with name and addresses of the parties/companies from whom the new equipment are purchased. Partywise amount of purchases should be mentioned in respect of amount Rs.13,15,52,862/-. You are also requested to explain the amount paid to the party and sources of amount utilized for making payment.

42. Produce the list of editing equipment – “recorder based” with name and addresses of the parties/companies from whom the new equipment are purchased. Partywise amount of purchases should be mentioned in respect of amount Rs.50,65,494/-. You are also requested to explain the amount paid to the party and sources of amount utilized for making payment.

43. Produce the list of editing equipment – others with name and addresses of the parties/companies from whom the new equipment are purchased. Partywise amount of purchases should be mentioned in respect of amount Rs.68,33,286/-. You are also requested to explain the amount paid to the party and sources of amount utilized for making payment.’

The Id. Counsel further explained that these details, filed before the A.O. were available with him during the course of the original assessment proceedings, and that nothing new has come to light after the assessment. According to him, the assessee had filed all the details, disclosing fully and truly all the material facts relating to the claim of depreciation on computer based editing equipments necessary for its assessment for the relevant year. There was, as such, no failure on the part of the assessee to disclose fully and truly any material facts necessary for its assessment. In view of these facts, it was submitted that the reopening is bad in law.

The Id. DR relied on the orders by the Revenue authorities and could not controvert any of the contentions made (with reference to the record) by the Id. AR.

6. We have heard the parties, and perused the material on record.

The reassessment in the instant case is clearly beyond a period of four years from the end of the relevant assessment year. We firstly note that the reasons recorded

state that the computer is a part comprising the editing equipment and not the whole of it, so that it does not by itself qualify to be a computer. This is precisely what the assessee states when it classifies the editing equipments as 'computer based' and 'non-computer based'. The issue therefore that would arise is if a computer-based equipment could be regarded as a computer system, eligible for claim of depreciation at a higher rate. The matter is clearly debatable, leading to no clear inference one way or the other. Further, even assuming this reason to be valid, it emanates from the assessee's accounts and details itself. How could then it be regarded as valid, considering that no fresh material or fact informs the 'reasons recorded'. We further observe that the assessee had filed complete particulars relating to these items, i.e., editing equipments, which are enclosed in the assessee's paper-book (at pgs. 111-119), in support of its claim for depreciation on computer based equipments at 60%. The issue, in our view, is thus also covered by the first *proviso* to section 147 of the Act. The same gets attracted where the original assessment for the relevant year is u/s.143(3) and there is failure on the part of the assessee to disclose fully and truly all the material facts necessary for assessment, which is sought to be reopened beyond a period of four years from the end of the relevant assessment year. The law in the matter is well settled, even as reliance may be placed on the decision by the Hon'ble Supreme Court in the case of *CIT vs. Foramer France* [2003] 264 ITR 566, 567 (SC), affirming the decision of *Foramer vs. CIT* [2001] 247 ITR 436, 443 (All).

In the present case, apart from the fact that we observe no lapse on the part of the assessee to disclose fully and truly all the material facts necessary for the computation of its income, and neither has any been pointed to us, the claim has been subject to verification by the A.O. in the original proceedings. Further, though there is no discussion by him in the assessment order, he can only be considered as conscious and alive to this claim as the assessee had clearly bifurcated the editing equipments into two components, i.e., recorder based/others and computer based, claiming

depreciation at the general and the enhanced rate (of 60%) thereon respectively, filing details in their respect, *called for separately*. This then is a case of review, impermissible under the Act.

The Id. CIT(A) has allowed the reopening on the basis that there is no evidence to show that the assessee has furnished all the necessary details, including bills and vouchers for purchase of the equipments or their specification or technical expert reports, etc. during the course of the original assessment proceedings, so that the A.O. forming a view that the assets under reference may not qualify to be computers, cannot be entirely faulted. We cannot agree. There is, as afore-stated, firstly, no sound reason with the A.O., but merely a reason to suspect that the assessee's claim may not be correct. Two, the assessee had furnished all the details as were called for during the original proceedings, including details of computer based equipments. There is nothing to show that these details were not true or correct in any respect, much less material. Thirdly, the assessing authority forming a view on the basis of the material not found incorrect or untrue, is nevertheless a view, so that it becomes a case of review. Rather, as it appears, the A.O.'s action is guided by the consideration of being consistent in-as-much as like claim was not accepted by the Revenue for the immediately preceding year, i.e., A.Y. 2004-05. That by itself cannot be a ground for reopening.

7. In view of the foregoing, we, accepting the assessee's cross objection, quash the reassessment proceedings. The Revenue's appeal, on the merits of the disallowance (of the assessee's claim for additional depreciation) is consequently disallowed in-as-much as the reassessment order does not survive. We decide accordingly.

8. In the result, the assessee's cross objection is allowed and the Revenue's appeal is dismissed.

Order pronounced in the open court on July 18, 2016

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / Judicial Member

Sd/-

(Sanjay Arora)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : .07.2016

व.नि.स./Roshani, Sr. PS

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai