

**BEFORE IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL. VICE PRESIDENT AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**

ITA No. 184/DEL/2014
Assessment Year: 2004-05

Pearl Retails Pvt. Ltd
A-3, Naraina Industrial Area
Phase – II, New Delhi

Vs.

Dy. CIT
Circle -14(1)
New Delhi

PAN AAACP 1255 F
(Appellant)

(Respondent)

Assessee by : Shri Pradeep Dinodia, FCA
Shri R.K.Kapoor, FCA

Department by : Shri Amrit Lal, Sr-DR

Date of Hearing : 19.05.2016
Date of pronouncement : 29.07.2016

ORDER

PER CHANDRA MOHAN GARG, JUDICIAL MEMBER

This appeal has been filed by the assessee against the order of the ld. CIT(A)- XVII, Delhi dated 21.10.2013 in first appeal No. 355/11-12 pertaining to A.Y 2004-05.

2. The assessee has raised as many as 6 grounds of appeal which reads as under:

"1. That the Learned CIT (A) has on facts and in law erred in confirming the order u/s 147/ 143(3) of the Income Tax Act, 1961 passed by DCIT, Circle 14 (1), New Delhi vide order dated 16/02/2011.

2. That on the facts and in the circumstances of the case and in law, the learned CIT (A) erred in not considering the waiver of loan written off as business income under 41(1) of incomes tax act 1961 and thus denied the benefits of set off of brought forwarded losses of earlier year against this income by holding " Income from Other Sources "

3. That on the facts and in the circumstances of the case and in law, the learned CIT (A) is erred in holding that loans written off by creditors company should be assessed as "Income from other sources" instead of a business income.

4. That the Learned CIT (A) has not properly appreciated the submission made before her in on letter dated 06/09/2013 and 19/09/2013 and unjustifiably confirmed the order u/s 147 / 143(3) of the Income TAX Act, 1961 passed by the Assessing Officer.

5. That the appellant prays that the amount of Rs.50,00,000/- ordered to be treated as "Income from Other Sources" may be allowed to treat as "Income from Business and Profession" thus allowed the benefits of set off against income from brought forwarded business losses.

6. *That the appellant craves leave for any addition, deletion, amendment, modification, rectification and/ or withdraw any or all the above grounds of appeal before the disposal of the same to protect the substantial rights of the appellant assessee.”*

Ground No. 1

3. Apropos Ground No. 1, we have heard the rival contentions and have perused the relevant material on record. Besides several allegations mentioned in the written synopsis dated 12.5.2016 of the assessee, the main contention of the ld. AR is that no action u/s 147 of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] can be taken after expiry of four years from the end of the relevant A.Y unless there is a failure on the part of the to disclose fully and truly all material facts relevant for assessment. The ld. AR further contended that some new material facts have to come to the notice of the A.O that income chargeable to tax has escaped assessment in the order but initiated reassessment proceedings u/s 147 of the Act and for issuing notice u/s 148 of the Act. The ld. AR contended that no notice can be issued u/s 148 of the Act if all the facts were already available on record and had also been examined at the stage of original assessment framed u/s 143(3) of the Act that would tantamount to mere change of opinion which is not permissible in law. The ld. AR

narrating the facts of the case submitted that the assessee filed original return of income dated 13.10.2004 declaring an income of Rs. 1,45,56,809/- which income had been adjusted against brought forward assessed loss and the A.O passed assessment order u/s 143(3) of the Act dated 8.12.2006 after detailed enquiries and investigations on various issues and returned income was accepted at NIL therein. The ld. AR placing reliance on the decision of the Hon'ble Supreme Court in the case of CIT Vs Cray Research India Ltd reported at TS-509-Supreme Court-2015 submitted that the assessee is required to disclose fully and truly all material facts only. It is not due to the assessee to explain or interpret the law and legal inference from the said material facts has to be drawn by the assessee from the facts disclosed by the assessee during the assessment proceedings. The ld. AR lastly contended that from the reasons recorded, it is clear that the A.O mentioned that the amount of Rs. 50 lakhs needs to be disallowed which the assessee had returned back during the year and treated the same as business income of the assessee. The ld. AR further pointed out that the amount of Rs. 50 lakhs had been included in the taxable income of the assessee as has been taxed in the order passed u/s 143(3) of the Act. Therefore, assessment of jurisdiction u/s 147 of the Act was passed on erroneous understanding of facts which is bad in law

and cannot be held as sustainable. The ld. AR placed reliance on the decision of the Hon'ble Jurisdictional High Court of Delhi in the case of Oriental Insurance Co. Ltd. Vs. CIT reported at 378 ITR 421 [Del] and contended that reopening, based on erroneous facts, is illegal and bad in law.

4. Per contra, the ld. CIT-DR strongly supported the action of the A.O and vehemently contended that from the assessment record, it was revealed that income during the relevant previous years comprised of loans written off of Pearl Global Ltd of Rs. 50 lakhs which is covered under income from other sources, therefore, the A.O had reason to believe that income to the tune of Rs. 50 lakhs has escaped assessment within the meaning of section 147 of the Act. Therefore, the A.O was quite correct and justified in initiating reassessment proceedings and issuing notice u/s 147/148 of the Act.

5. On careful consideration of the above rival submissions, first of all, we may point out that the undisputedly and admittedly, original return was filed on 30.10.2004 for A.Y 2004-05 and the impugned reasons and notice for initiation of reassessment proceedings was recorded and issued on 25.3.2011 i.e. beyond four years of the time.

Thus, as per mandate of provisions of section 147 of the Act, no action could have been taken under this provision after expiry of four years from the end of the relevant A.Y unless any income chargeable to tax has escaped assessment for such A.Y for the reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment for that A.Y. In the present case, the A.O recorded the following reasons for initiation of reassessment proceedings:

“ Return of income was filed on 30.10.2004 at Nil income. The same was processed u/s 143(1) and thereafter u/s 143(3) at returned income.

It was revealed that the income during the relevant previous year comprised loans written off of Pearl Global Ltd of Rs. 50,00,000/- which is covered under ‘Income from other sources’ which should be disallowed.

In view of the above, I have reasons to believe that the income to the tune of Rs. 50,00,000/- have escaped assessment within the meaning of section 147 of the IT Act, 1961. I am also satisfied that on account of failure on the part of the assessee to disclose truly and fully all the material facts necessary for assessment for the above assessment year, the income chargeable to tax to the tune of Rs.50,00,000/- has escaped assessment within the meaning of section 147 of the I.T. Act, 1961.”

In view of the above, the main thrust of the A.O is that the amount of Rs. 50 lakhs loans written off pertaining to Pearl Global Ltd is covered under the head income from other sources and thereafter, the A.O proceeded to allege that he is satisfied that on account of failure on the part of the A.O to disclose truly and fully all material facts in this regard. In the present case, original assessment has been framed u/s 143(3) of the Act after due scrutiny and after all details were filed before the A.O. We also observe that income written back amount has been assessed as business income and claim for brought forward losses of the earlier years has been allowed. We also are in agreement with the contention of the ld. AR that the amount written back as loan has been carefully assed by the A.O as business income. Therefore, it cannot be alleged against the assessee that the assessee had not disclosed fully and truly all material facts regarding this issue during the assessment proceedings. We may also point out that the ld. counsel of the Revenue could not controvert this fact and another important aspect pertaining to the issue as contended by the assessee that after completion of assessment u/s 143(3) of the Act on 8.12.2006. The A.O also issued notice u/s 154 of the Act and wanted to change the head of income from impugned returned back amount and in response to the said notice dated 31.3.2010 reply dated

20.4.2010 was filed by the assessee but the A.O did not take any further action in this regard and rectification proceedings has been dropped by the A.O. The ld. AR vehemently contended that subsequently, by resorting to provisions of section 147/148 of the Act, the A.O changed his opinion which was taken at the stage of original assessment but also during rectification proceedings which were initiated and dropped by him. From the copy of notice u/s 154 of the Act available at pages 21 to 23 of the assessee's paper book, it is amply clear that the A.O on 31.3.2010, issued notice to the assessee showing his intention to convert head of income from business income to income from other sources pertaining to impugned amount of Rs. 15 lakhs comprising loans written off of Pearl Global Limited and the assessee had also filed reply on 20.4.2010 explaining that the loan was given for business consideration and the amount written off was treated as profit u/s 41(1) of the Act. Therefore, in the original assessment order, the A.O rightly treated the same as business income and consequently it was adjusted against brought forward business losses. In view of the above, we are satisfied that the A.O initiated reassessment proceedings beyond four years passed on erroneous facts that the impugned amount had already been offered for tax by the assessee as business income whereas the A.O noted that income to the

tune of Rs. 50 lakhs has escaped assessment. We may also point out that the main dispute was regarding charging of the said amount as in the original assessment proceedings the A.O taxed the same as business income whereas in the reassessment proceedings the A.O has shown his intention to tax the same as income from other sources and we may also point out that the rectification proceedings u/s 154 of the Act initiated by the A.O earlier were dropped after considering the reply of the assessee. Therefore, we decline to accept the allegation of the A.O that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. Therefore, initiation of reassessment proceedings and issuance of notice u/s 147/148 of the Act cannot be held as sustainable and valid and we have not hesitation to hold that the same was not a valid assessment of jurisdiction and it was bad in law and not sustainable and consequently, legal Ground No. 1 is allowed by respectfully following the ratio of the decision of the jurisdictional High Court in the case of CIT Vs. Cray Research India Ltd [supra] and notice u/s 148 of the Act as well as consequent assessment order dated 16.12.2011 are quashed.

6. Since by the earlier part of this order we have quashed the assessment order as well as notice issued u/s 148 of the Act, therefore, grounds of the assessee on merits have become academic and infructuous and accordingly we dismiss the same as having become infructuous.

7. In the result, appeal of the assessee is allowed on legal grounds.

Order pronounced in the open court on 29.07.2016.

Sd/-

(G.D. AGRAWAL)
VICE PRESIDENT

Sd/-

(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated : 29th July, 2016

VL/

Copy of order forwarded to:

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

By Order

Asstt Registrar, ITAT,
New Delhi