

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: "G" New Delhi

BEFORE SHRI J.SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No: 5234/Del/2010
AY: - 1992-93

Salim Khan L/H of Late Amanullah Khan vs. ITO
Pathanpura Ward-1
Roorkee Roorkee
(PAN ADYPK3527D)

(Appellant)

(Respondent)

CO No: 413/Del/2010
AY: - 1992-93

ITO vs. Salim Khan L/H of Late Amanullah Khan
Ward-1 Pathanpura
Roorkee Roorkee
(PAN ADYPK3527D)

(Appellant)

(Respondent)

Appellant by : Shri Ved Jain, CA
Respondent by : Shri Sujit Kumar, Sr.DR

Date of Hearing : 11.09.2015
Date of pronouncement : .11.2015

ORDER

PER SUDHANSHU SRIVASTAVA JUDICIAL MEMBER

The present appeal has been filed by the assessee against the order dated 24.08.2010 passed by the Ld. CIT (A)-1, Dehradun whereas the CO has been filed by the Department.

ITA 5234/Del/2010

2. The brief facts of the case are as under:-

The assessee had filed his return of income for the year under consideration declaring an income of Rs. 72,650/-. Subsequently, the assessee received additional compensation along with interest in respect of the land acquired by the State Government. The AO issued notice u/s 148 of the Income Tax Act, 1961 on the ground that he had reason to believe that the income pertaining to additional compensation was taxable and had escapement assessment. However in the assessment order, only a disallowance of depreciation on car, amounting to Rs. 13,250/- was made, and no addition or disallowance was made with regard to the reasons recorded i.e. on account of compensation. This action of the AO was challenged before the Ld. CIT (A) on the ground that since the AO had made no addition on account of additional compensation i.e. the reason for which the reassessment proceedings were initiated, the proceedings u/s 148 must be declared void. However, the Ld. CIT (A) was of the opinion that if the AO had reason to believe that income had escaped assessment, he was competent to initiate proceedings u/s 147 of the Act and what was required at that stage was the existence of the prime facie reason to believe and not the conclusive finding. The Ld. CIT (A) accordingly dismissed the appeal of the assessee.

3. In the present appeal before the assessee has raised three grounds of appeal which are as under:-

1. *"That the order is against law and facts of the case.*

2. *That the income on which tax was deducted if not found taxable, the amount of TDS is refundable to the appellant and it can't be retained on the vague interpretation of Law given by the A/o and the learned CIT (A). TDS is advance payment of tax and the same is refundable where even the Income is not found taxable.*
3. *That the 1st Appeal Authority was bound by the decision already given by their predecessor and the method adopted in case of Co-Shares. "*

4. However, at the time of hearing, the Ld. AO of the Counsel submitted that he is not pressing ground No. 2, so this ground is dismissed as not pressed. The remaining ground, in effect, pertains to the issue as to whether the reopening of assessment u/s 148 is legal or not. The Ld. AR for the assessee submitted that in absence of fresh tangible material, the AO cannot make additions other than those based on the reasons recorded for reopening. He submitted that when the assessment is reopened by issuance of a notice u/s 148, the previous assessment is set aside and the whole assessment proceedings start afresh. But where no addition has been made on issues on which reasons to believe are recorded, then addition is not permissible without recording of fresh reasons. The Ld. AR relied on the decision of the Hon'ble High Court of Delhi in the case of Ranbaxy Laboratories Ltd. vs. CIT 336 ITR 136 (Del) and of the Hon'ble Bombay High Court in the case of Commissioner of Income Tax vs. M/s. Jet Airways (I) Ltd. 331 ITR 236 (Bom). Placing reliance on these decisions he submitted that the reassessment proceedings were bad in law and hence liable to be quashed.

5. Ld. DR on the other hand supported the orders of the AO as well as the Ld. CIT (A).

6. We have heard the rival submissions and have perused the documents on record. It is seen that the only addition made during the reassessment is on account of depreciation amounting to Rs. 13,250/- and no other addition/disallowance has been made although the assessment was reopened for the reason that additional compensation along with interest thereon has not been offered to tax by the assessee. Reference may be made to sections 147 and 148 which read as under:-

"147. Income escaping assessment.-If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :

Explanation 2 – For the purposes of the section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :-

- (a) Where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax ;*
- (b) Where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return ;*
- (c) Where an assessment has been made, but –*
 - (i) income chargeable to tax has been underassessed ; or*
 - (ii) such income has been assessed at too low a rate ; or*
 - (iii) such income has been made the subject of excessive relief under this Act ; or*
 - (iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed.*

Explanation 3 – For the purpose of assessment or reassessment under this section the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment , and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.

148. Issue of notice where income escaped assessment – (1) Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed ; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139... (2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so."

7. Reference may be made on this juncture to the decision rendered by the Honble High Court of Bombay in CIT vs. M/s. Jet Airways (I) Ltd. (supra) which has been approved and applied by the Hon'ble Delhi High Court in Ranbaxy Laboratories Ltd. vs. CIT (supra) as under :-

17. Now, coming back to the interpretation which was given by the Bombay High Court to sections 147 and 148 in view of the precedent on the subject, the court held as under (pages 243 and 247 of 331 ITR) :

"Interpreting the provision as it stands and without adding or deducting from the words used by Parliament, it is clear that upon the formation of a reason to believe under section 147 and following the issuance of a notice under section 148, the Assessing Officer has the power to assess or reassess the income which he has reason to believe had escaped assessment, and also any other income chargeable to tax. The words 'and also' cannot be ignored. The interpretation which the court places on the provision should not result in diluting the effect of these words or rendering any part of the language used by Parliament

otiose. Parliament having used the words 'assess or reassess such income and also any other income chargeable to tax which has escaped assessment', the words 'and also' cannot be read as being in the alternative. On the contrary, the correct interpretation would be to regard those words as being conjunctive and cumulative. It is of some significance that Parliament has not used the word 'or'. The Legislature did not rest content by merely using the word 'and'. The words 'and' as well as 'also' have been used together and in conjunction.

Evidently, therefore, what Parliament intends by use of the words 'and also' is that the Assessing Officer, upon the formation of a reason to believe under section 147 and the issuance of a notice under section 148(2) must assess or reassess: (i). 'such income'; and also (ii) any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. The words 'such income' refer to the income chargeable to tax which has escaped assessment and in respect of which the Assessing Officer has formed a reason to believe that it has escaped assessment. Hence, the language which has been used by Parliament is indicative of the position that the assessment or reassessment must be in respect of the income in respect of which he has formed a reason to believe that it has escaped assessment and also in respect of any other income which comes to his notice subsequently during the course of the proceedings as having escaped assessment. If the income, the escapement of which was the basis of the formation of the reason to believe is not assessed or reassessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment. 'If upon the issuance of a notice under section 148(2), the Assessing Officer accepts the objections of the assessee and does not assess or reassess the income which was the basis of the notice, it would not be open to him to assess income under some other issue independently. Parliament when it enacted the provisions of section 147 with effect from April 1, 1989 clearly stipulated that the Assessing Officer has to assess or reassess the income which he had reason to believe had escaped assessment and also any other income chargeable to tax which came to his notice during the proceedings. In the absence of the assessment or reassessment the former, he cannot independently assess the latter'.

Section 147 has this effect that the Assessing Officer has to assess or reassess the income ('such income') which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his

notice during the course of the proceedings. However, if after issuing a notice under section 148, he 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 assess some other income. If he intends to do so, a fresh notice under section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee." (Emphasis supplied)

8. In the present appeal, the very basis of initiation of proceedings for which reasons to believe were recorded was income escaping assessment in respect of additional compensation along with interest. But although the AO did not make any addition on account of additional compensation/interest, the AO proceeded to reduce the assessee's claim of depreciation without taking recourse to fresh recording of reasons. This, as per the ratio of the decisions laid down by the Hon'ble Delhi and Bombay High Courts, is not permissible. Had the AO proceeded to make addition in respect of additional compensation / interest etc. also, then in view of the decisions of the two Hon'ble High Courts, he would have been justified to disallow the claim of depreciation also. However, addition only on account of depreciation without recording of reasons afresh vitiates the entire reassessment proceedings. In the result we quash the reassessment proceedings and allow the appeal of the assessee.

CO No. 413/Del/10

9. The CO of the Department pertains to ground No. 2 of the assessee's appeal regarding tax deduction at source. Since the assessee has already not pressed this ground of appeal, the CO also is not being adjudicated.

10. In the result the CO of the Department is dismissed.

11. In the combined result, the appeal of the assessee is allowed and the CO of the Department is dismissed.

Pronounced in the open court On 30th November, 2015.

sd/-

sd/-

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

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: the 30. 11. 2015

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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
Dy. Registrar

Sl. No.	Description	Date
1.	Date of dictation by the Author	26.11.2015
2.	Draft placed before the Dictating Member	27.11. 2015

3.	Draft placed before the Second Member	
4.	Draft approved by the Second Member	
5.	Date of approved order comes to the Sr. PS	
6.	Date of pronouncement of order	
7.	Date of file sent to the Bench Clerk	
8.	Date on which file goes to the Head Clerk	
9.	Date of dispatch of order	