

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'C' BENCH: CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एम बाला गणेश, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT**  
**AND**  
**SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.2334/Chny/2019

निर्धारण वर्ष /Assessment Year: 2013-14

M/s. SPR & RG constructions Pvt.  
Ltd.,  
No.57, 1<sup>st</sup> Floor, Narayana Mudali,  
Sowcarpet,  
Chennai – 600 079.

The Asst. Commissioner of  
Income Tax,  
Corporate Circle-6(2),  
Chennai.

**[PAN: AANCS 6296E]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Mrs. Vijayaprabha, JCIT

सुनवाई की तारीख/Date of Hearing

: 25.02.2020

घोषणा की तारीख /Date of Pronouncement

: 25.02.2020

## आदेश / O R D E R

### PER SHRI MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of CIT(A)-15, Chennai, in ITA No. 62/2018-19/CIT(a)-15 dated 31.05.2019. The re-assessment order was framed by ACIT, Corporate Circle-6(2), Chennai for the relevant A.Y. 2013-14 vide order dated 09.11.2018

u/s. 143(3) r/w s. 147 of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The first issue in this appeal of the assessee is against the reopening of the assessment u/s. 147 r/w s. 148 of the Act. For this the assessee has raised the following three effective grounds:

*"1. The order of the Commissioner of Income Tax (Appeals) - 15, Chennai dated 31.05.2019 in I.T.A.No.62/2018-19/CIT(A)-15 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.*

*2. The CIT (Appeals) erred in sustaining the assumption of jurisdiction u/s 147 of the Act and consequently erred in sustaining the re-assessment completed u/s 143(3) read with section 147 of the Act without assigning proper reasons and justification.*

*3. The CIT (Appeals) failed to appreciate that the lack of tangible materials would vitiate the assumption of jurisdiction u/s 147 of the Act in light of the original assessment completed u/s 143(3) of the Act and further ought to have appreciated that the presumption of escapement of income in the hands of the Appellant solely based on the perusal of return of income filed originally should be reckoned as bad in law."*

3. Briefly stated facts are that the assessee-company is a civil contractor, builder and developer. The assessee-company filed its return of income for the relevant assessment year 2013-14 on 30.09.2013. Subsequently, the assessee filed a revised return on 26.11.2013. The assessment was selected for scrutiny under CASS and notice u/s. 143(2) of the Act dated 03.09.2014 was served and original assessment was completed by DCIT, Corporate Circle-6(2), Chennai vide his order dated 31.03.2016 u/s. 143(3) of the Act. The Ld. Counsel for the assessee challenged the reopening. First of all he

took us through the reasons recorded which reads as under (the reasons have provided by the Revenue also):

*“The assessee is a company dealing with business of civil construction: It filed the return of income for the AY 2013-14 on 30/09/2013 declaring income of Rs. 4,71,00,925/- Successively a revised return was filed on 26/11/2013 declaring Gross Total income of Rs. 4,75,00,518/-. The order u/s 143(3) was passed on 31/03/2016 with assessed income of Rs. 4,74,50,520/-.*

*2. Perusal of Schedule 30 of the Profit and Loss Statement of the Assessee reveals that the assessee had claimed an amount of Rs. 1 6553,568/- as Amortisation on Intangible Assets. No such claim was made in the Profit and Loss statement in the previous year. The particulars of Intangible Assets have been provided by the assessee in Schedule 13 of the Balance Sheets of the assessee. Perusal of Schedule 13 of the Balance Sheet of the assessee reveals ‘Model Flats and Site Office Construction Expenses’ have been stated to be Intangible Assets. The assessee was having a Closing Balance for the A.Y. 20 12-13 of an amount of Rs. 4,89,24,805/-. The same is the opening balance for the A.Y 201 3-14. An addition of Rs. 7,35,898/- has been made during the year. On this the assessee has claimed an Amortisation of Rs. 1,65,53,568/-. However the amortisation was not claimed on the Intangible Asset during the last A.Y i.e 201 2-13 even though the asset was present in the books of the assessee.*

*3. Under the Income-Tax Act, the term Intangible Assets has been defined u/s 32(1 )(ii) of the Act. Intangible Assets are know-how, patents, copyrights, trade marks, licenses, franchises or any other business or commercial rights of similar nature. Expenditure incurred on ‘Model Flats and Site Office Construction Expenses’ does not and would not come under the definition of ‘Intangible Assets’ as defined under the Act.*

*4. The provisions related to Amortisation have also been provided u/s 35D, 35DD and section 35DDA of the Act. Perusal of the three sections reveals that the conditions mentioned for claim of Amortisation have not been fulfilled by the assessee. The claim of Amortisation is not available on ‘Model Flats and Site Office Construction Expenses’ under the Act.*

*5. The assessee has made an incorrect claim and has reduced his Income and had accordingly under paid the taxes. In view of the above facts and circumstances of the case, I have reason to believe that income has escaped assessment and that the case is a fit case for issued of notice u/s 148 of the Income Tax Act.*

**6. Applicability of the provisions of section 147(1) to the facts of the case:**

*In this case a return of income was filed for the year under consideration and regular assessment u/s 143(3)11-47 was made on 31/03/2016. Since, 4 years from the end of the relevant year has not expired in this case, the only requirement to initiate proceeding u/s 147 is reason to believe which has been recorded above (refer paragraphs 3, 4 & 5).*

*In view of the above facts, the provisions of clause (c) of explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.*

*This case is within four years from the end of the assessment year under consideration. Hence necessary sanction to issue the notice u/s 148 is sought from Joint Commissioner of Income Tax as per the provisions of section 151 of the Act.”*

4. The Ld. Counsel stated that these reasons were contested before the Assessing Officer and raised objections vide letter dated 22.10.2018, wherein it was specifically pointed out in para 3.2.1 which reads as under:

*“3.2.1 The provisions of section 147 as stated above clearly bring out the meaning that the AO should have reasons to believe that certain Income has escaped assessment on the basis of new facts or information which come to his notice subsequently. It is settled that for taking an action under section 147 of the Act, it is vital for the AO to have valid reason(s) for reopening an assessment and such reasons should not be based on mere change of opinion. Therefore, proceedings under section 148 cannot be initiated upon a mere change of opinion of the AO on the basis of new views or fresh application of mind by the AO on the same or existing set of facts.”*

5. The Ld. Counsel submitted that in view of the above and the reasons recorded it is stated that the entire material was before the Assessing Officer during the original assessment proceedings and he has noted the reasons from the balance sheet Schedule 30 of the

profit and loss account of the assessee that the assessee has claimed an amount of rupees 1,65,53,568/- as Amortization of Intangible asset. He stated that the reason noted by the Assessing Officer whether such claim was made in the profit and loss account in the previous year but particulars of intangible asset have been provided by the assessee in Schedule 13 of the balance sheet of the previous year. The Ld. Counsel submitted that in view of the above stated facts it is clear that there is no tangible material from where the Assessing Officer should have formed reason to believe that certain income has escaped assessment on the basis of new facts. According to him, since there is no intangible material or new facts from where it has come to light that the income has escaped assessment after assessment framed u/s. 143(3) originally vide order dated 31.03.2016. The Ld. Counsel drew our attention to the decision of Hon'ble Delhi High Court in the case of CIT vs. Orient Craft Ltd. [2013] 29 taxmann.com 392 (Del.) and the Hon'ble Madras High Court in the case of TANMAC India vs. Dy. CIT [2017] 78 taxmann.com 155 (Mad.). The Ld. Counsel stated that the decision of Hon'ble Supreme Court in the case of CIT vs. Kelvinator of India Ltd. [2010] 320 ITR 561 (SC) was also considered by Hon'ble Madras High Court in the case of TANMAC India (supra) and held as under:

*“17. A decision of the Delhi High Court in the case of Orient Craft Ltd. (supra) had occasion to consider a similar question and the Division Bench, at Page 546, holds as follows;*

*‘Having regard to the judicial interpretation placed upon the expression reason to believe”, and the continued use of that expression right from 1948 till date, we have to understand the meaning of the expression in exactly the same manner in which it has been understood by the courts. The assumption of the Revenue that somehow the words “reason to believe” have to be understood in a liberal manner where the finality of an intimation under section 143(1) is sought to be disturbed is erroneous and misconceived. As pointed out earlier, there is no warrant for such an assumption because of the language employed in section 147; it makes no distinction between an order passed under section 143(3) and the intimation issued under section 143(1). Therefore, it is not permissible to adopt different standards while interpreting the words “reason to believe” vis-à-vis section 143(1) and section 143(3). We are unable to appreciate what permits the Revenue to assume that somehow the same rigorous standards which are applicable in the interpretation of the expression when it is applied to the reopening of an assessment earlier made under section 143(3) cannot apply where only an intimation was issued earlier under section 143(1). It would in effect place an assessee in whose case the return was processed under section 143(1) in a more vulnerable position than an assessee in whose case there was a full-fledged scrutiny or is accepted without demur is not a matter which is within the control of the assessee; he has no choice in the matter. The other consequence, which is somewhat graver, would be that the entire rigorous procedure involved in reopening an assessment and the burden of proving valid reasons to believe could be circumvented by first accepting the return under section 143(J) and thereafter, issue notices to reopen the assessment. An interpretation which makes a distinction between the meaning and content of the expression “reason to believe” in cases where assessments were framed earlier under section 143(3) and cases where mere intimations were issued earlier under section 143(1) may well lead to such an unintended mischief. It would be discriminatory too. An interpretation that leads to absurd results or mischief is to be eschewed.”*

*The reasons recorded by the Assessing Officer reached the belief that there was escapement of income “on going through the return of income” filed by the assessee after he accepted the return under section 143(1) without scrutiny, and nothing more. This is nothing but a review of the earlier proceedings and an abuse of power by the Assessing Officer, both strongly deprecated by the Supreme Court in CIT v. Kelvinator (supra).”*

6. He also drew our attention to the phrase reason to believe discussed by Hon'ble Supreme Court in the case of CIT vs. Kelvinator of India Ltd. (supra), while interpreting the provisions of s. 147 which held as under:

*"We must also keep in mind the conceptual difference between power to review and power to reassess. The Assessing Officer has no power to review, he has the power to reassess. But reassessment has to be based on fulfillment of certain pre-conditions and if the concept of 'change of opinion' is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place. One must treat the concept of 'change of opinion' as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, the Assessing Officer has power to reopen, provided there is 'tangible material' to come to the conclusion that there is escapement of income from assessment. Reasons must have a link with the formation of the belief."*

7. On the other hand, the Ld. Sr. DR stated that the reasons recorded are sufficient to reopen the assessment and she stated that the reasons are based on earlier years balance sheets and not this year's balance sheet. In reply, the Ld. Counsel stated that the Assessing Officer's reasons for reopening is based on the perusal of Schedule 30 of the profit and loss account of the assessee for the relevant year, which revealed that the assessee has claimed an amount of Rs. 1,65,53,568/- as Amortization of Intangible assets.

8. We have heard the rival contentions and perused the material on record. We noted that the original assessment was framed u/s. 143(3) of the Act vide order dated 31.03.2016 and from the above reproduced

reasons it is clear that the reasons recorded are on the basis of the audited accounts of the assessee i.e., specifically perusal of Schedule 30 of the profit and loss account and on that very basis the reopening is made. From the above reasons recorded, which are reproduced above, it is clear that the AO has reopened the assessment based on the information already available in the assessment record at his disposal and nothing new information has come to his notice based on which the assessment was reopened. We also noted that the claim of the assessee in regard to amortization in respect of model flats and site office construction expenses incurred by the assessee without having regard to the fact that the model flats and site office was demolished after three years and till such period it had persuasive value for deriving sales of the assessee. Even the claim of the amortization even if not allowed then also given that model flats and site office construction claimed to have been in the nature temporary erections and depreciation @ 100% is to be allowed as provided in entry-I(4) of part A to new Appendix-I. We noted that Hon'ble Supreme Court in the case Kelvinator of India Ltd. (supra) has interpreted the words, "reason to believe" wherein it is held the Section 147 would give arbitrary powers to the AO to reopen the assessment on the basis of mere change of opinion failing to give a systematic interpretation. It was held that there is conceptual difference between power to review

and power to frame reassessment. It was held that even after 01.04.1999 the AO has power to reopen the assessment provided there is tangible material to come to the conclusion that there is escapement of income. It was further held that there can be no review on an assessment in the guise of reopening and that a bear review without any tangible material, which would tantamount to abuse of power. Hence, in the given facts in the present case, we respectfully the decision of Hon'ble Supreme Court in the case of Kelvinator of India Ltd. (supra) and the Hon'ble Madras High Court in the case of TANMAC India (supra), quash the reassessment and allow the appeal of the assessee.

9. Coming to the merits of the case, since we have quashed the reassessment, we need not to go into the merits of the appeal.

10. In the result, the appeal of the assessee is allowed.

*Order pronounced on 25<sup>th</sup> day of February, 2020 in Chennai.*

Sd/-

एम बाला गणेश)

**(M. BALAGANESH)**

**लेखा सदस्य /Accountant Member**

चेन्नई/Chennai, दिनांक/Dated: 25<sup>th</sup> February, 2020.

*EDN, Sr. P.S*

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**

**उपाध्यक्ष /VICE PRESIDENT**

**:- 10 :-**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF