

101 IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

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ITA No. 438 of 2018 (O&M)  
DECIDED ON: JANUARY 28, 2020

PR. COMMISSIONER OF INCOME TAX-1, CHANDIGARH

APPELLANT

VERSUS

M/S GOYAL BUILDERS

RESPONDENT

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI  
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Yogesh Putney, Senior Standing Counsel  
for the appellant.

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AJAY TEWARI, J (Oral):

This appeal has been filed by the revenue against the orders of the Commissioner of Income Tax (Appeal)-3, Gurgaon and the Income Tax Appellate Tribunal Division Bench 'A', Chandigarh whereby, the stand of the assessee was accepted and notice under Section 148 of the Income Tax Act 1961 (for short 'the Act') was set aside.

2. The brief facts are that a search was conducted on the premises under Section 132(1) of the Act. Thereafter proceedings were initiated and ultimately an order under Section 143 (3) of the Act was passed on 29.12.2010. After a period of about 2 ½ years a successor officer probably realised that there were glaring omissions in the original order under Section 143 (3) of the Act and issued a notice under Section 148(1) of the Act stating that payments of ₹48,00,000/- odd had been made by the assessee in cash contrary to Section 40A(3) read with Rule 6DD of the Income Tax Rules 1962 (for short 'the Rules') and framed re-assessment. In subsequent proceedings the Commissioner and Tribunal held that a specific query had

been put by the original AO to the assessee regarding sales and purchases and in response thereto, all details had been furnished by the assessee and therefore the issue of cash payments in contravention of Section 40A(3) read with Rule 6DD of the Rules was before the Assessing Officer and therefore invocation of Section 148(1) of the Act was hit by the doctrine of change of opinion.

3. The only contention raised before us is that in the original assessment order no opinion at all was formed and therefore, it was erroneous for the Commissioner and the Tribunal to held to be a case of change of opinion. This argument is to be rejected. It is not in dispute that the issue of cash payments and evidence thereof, was before the Assessing Officer and wrongly he ignored it. The remedy before the revenue was to have challenge that order but the revenue did not do so and proceeded in the manner aforementioned. Once an issue and evidence there of, is clearly before an authority and the authority ignores it, it cannot later on decide to re-open on that ground and the specious argument that if there is no opinion there can be no change of opinion, would not apply.

4. Dismissed.

[AJAY TEWARI]  
JUDGE

[AVNEESH JHINGAN]  
JUDGE

JANUARY 28, 2020  
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1. Whether speaking/ reasoned	:	Yes / No
2. Whether reportable	:	Yes / No